

Banking Dispute and Alternative Dispute Resolution in Financial Services Sector as a Means to Resolve Disputes between Bank and Consumers in Indonesia

by Pan, Lindawaty Suherman Sewu

Submission date: 05-Oct-2020 10:25PM (UTC+0700)

Submission ID: 1405962224

File name: 18_Banking_Dispute_and_Alternative_Dispute_Resolution_isi.pdf (12.72M)

Word count: 2864

Character count: 15809

Banking Dispute and Alternative Dispute Resolution in Financial Services Sector as a Means to Resolve Disputes between Bank and Consumers in Indonesia

Pan, Lindawaty Suherman Sewu*)⁴⁰

*Faculty of Law at Maranatha Christian Univeristy
Bandung, Indonesia*

Abstract: A bank is one of the financial institutions aiming to collect and distribute funds to the society. In collecting and distributing the funds to the society, a bank is always related to people. In the bank giving services to the consumers, the consumers may sometimes feel dissatisfied. This consumers' dissatisfaction with the bank's services, if unresolved, will cause a dispute between the consumers and the bank. When this takes place, some steps should be taken by the consumers so that they can have the resolution of the dispute. The research uses the normative juridical research method by analyzing the regulations related to banking as arranged in Law No. 7 of 1992 on Bank as changed into Law No. 10 of 1998 on Change of Law No. 7 of 1992 on Bank, and regulations of Dispute Resolution in the Financial Services Sector as arranged in Financial Service Authority Regulations as arranged in Number 1/POJK.07/2014 on Alternative Dispute Resolution in Financial Services Sector. This is a descriptive analytical research, which describes the causes of the disputes between the bank and consumers, and the alternative dispute resolution in the financial services sector. Moreover, it analyzes the facts in the banking practices when there is a dispute between the bank and the consumers, and then how the dispute is resolved. The data collection technique uses the secondary data as the main data and the primary data as supporting the secondary data. If there is a dispute between the bank and the consumers, the Financial Services Authority in Indonesia establishes two policies in the dispute resolution mechanism, namely the resolution of the complaints done by Financial Services Institution, which is known as *Internal Dispute Resolution* and dispute resolution through judicial institution or institutions other than the court, which is called *External Dispute Resolution*. Dispute resolution outside the court is done through Alternative Dispute Resolution in Financial Services Sector.

Keywords: Bank, Consumer, Banking Dispute, Alternative Dispute Resolution in Financial Services Sector

A. Background of the Study

The history of banking in Indonesia cannot be separated from Dutch East Indie colonialism. At that time De Javasche Bank, NV was founded in Batavia on 24 January 1828 and then it was followed by Nederlandsche Indische Escompto Maatschappij, NV in 1918 as the monopoly holder of the purchase of the country's natural resources and their selling overseas as well as several banks which have important roles in the Dutch East Indie. The word bank comes from Italian, banca, meaning a place for money exchange. At present the bank institution in Indonesia runs well as a business entity which collects fund from the society in the form of savings and distributes it to the society in the form of credit and or other forms in order to increase the people's living standards. In the last decade the banking industry in Indonesia has experienced changes in the policies, legal basis, management, etc. Bank Indonesia authority becomes independent and the Financial Service Authority is established, which is the milestone to make Indonesian banking more competitive. Based on Law No 10 of 1998 on the changes of Law No 7 of 1992 concerning banking, a bank is a business entity which collects fund from the society in the form of savings and

distributes it to the society in the form of credit and or other forms in order to increase the people's living standards. As a financial institution, a bank has activities of giving fund and credit. Thus, as an intermediary institution, a bank functions as an intermediary between those with excess funds and those which need funds.

As an intermediary institution, a bank has the function of a financial intermediary. In this role, there is a relationship between the bank and the customers which is based on two related elements, namely law and trust. A bank can only do its activities and develop the bank if the society has the "trust" to put the money in the products of the bank. Based on the society's trust, a bank can mobilize the society's funds to be put in the bank and distribute it again in the form of credit as well as giving the banking services.

Consequently, a bank must give the best services to the customers so that there is a good relationship between the bank and customers. However, in practice, there are some problems in the relationship between a bank and its customers. Some things that can trigger problems between a bank and its customers are:

⁴⁰ Lecturer of the Faculty of Law, Universitas Kristen Maranatha, Bandung

1. Inadequate information of the characteristics of the products or services offered by the bank;
2. The customers' insufficient understanding of the banking activities and its products or services;
3. The inequality of the relationship between the customers and the bank, especially customers who borrow some funds, and;
4. The lack of adequate channels facilitating the early settlement of frictions taking place between customers and the bank.

B. Problems

Problems arising between a bank and its customers must be settled in a constructive way so that all sides can be satisfied. One supervision object done by Financial Services Authority (FSA) concerns disputes and their settlement in banking financial services sector. As a result, related to the dispute settlement in banking financial services sector, it is necessary to have an institutional strengthening effort to establish a mediation institution in banking financial services sector. In relation to the establishment of a mediation institution in banking financial services sector, FS⁶ publishes Financial Services Authority Regulations No. 1/POJK.07/2014 concerning Alternative Dispute Resolution in Financial Services Sector.

This leads to the question of what the regulations are and how they set the alternative dispute resolution in financial services sector, and what is the mechanism of dispute resolution in financial services sector in Indonesia.

C. Research Method

The research uses the normative juridical research method by analyzing the regulations related to banking as arranged in Law No. 7 of 1992 on Bank as changed into Law No. 10 of 1998 on Change of Law No. 7 of 1992 on Bank, and regulations of Dispute Resolution in the Financial Services Sector as arranged in Finan⁵ Service Authority Regulations as arranged in Number 1/POJK.07/2014 on Alternative Dispute Resolution in Financial Services Sector. This is a descriptive analytical research, which describes the causes of the disputes between the bank and consumers, and the alternative dispute resolution in the financial services sector. Moreover, it analyzes the facts in the banking practices when there is a dispute between the bank and the consumers, and then how the dispute is resolved. The data collection technique uses the secondary data as the main data and the primary data as supporting the secondary data.

D. Discussion

Financial Services Authority (FSA) ⁷ublished Financial Services Authority Circular Letter No. 2/SEOJK.07/2014 on Circular Letter of The FSA about Concerning Handling and Resolution of Cons⁸umer Complaints at Financial Services Businesses through Financial Services Authority Regulation No. 1/POJK.07/2014 on Alternative Dispute Resolution in Financial Services Sector. These two regulations become a

reference to resolve disputes which occur in Financial Services Sector.

Consumers' protection in financial services sector aims to create a reliable consumers' protection system, increase consumers' empowerment, and raise the awareness of financial services institution until it manages to increase the society's trust on financial services sector. Consumers' protection is a series of policies and activities which cover education, information services, and complaints as well as facilitating dispute resolution for consumers of financial services sector and the society who uses financial services. The dispute resolution between a bank and consumers can be done as follows:

1. Internal Dispute Resolution

Internal Dispute Resolution is consumers' complaint resolution done by the bank. Financial Services Authority Regulation No. 1/2013 obliges each bank to have a unit specifically formed in each bank office to handle and resolve complaints filed by consumers without any charge. This obligation is based on Article 32 Paragraph (1), which determines "Financial services businessmen must have and apply the mechanism of consumers' complaint services and resolution".

A complaint is an expression of consumer's dissatisfaction which is caused by the loss or potential loss for the consumers which allegedly happens because of the mistake or negligence done by Financial Services Institution in the consumer's fund placement in Financial Services Institution and/or in the utilization of services and/or consumers' products of Financial Services Institution.

After receiving consumers' complaints, a bank must have an internal checking on the complaints in a competent, correct, and objective way, analyze them so as to ensure the truth of the complaints, and submit an apology and offer redress or remedy, or repairs of products and/or services if the consumer's complaint is proved true. A dispute will appear only when this consumer's complaint process is not successful.

Article 1 number 13 POJK No.1/POJK.07/2014 defines a dispute to be that between consumers and Financial Services Institution in the fund placement on the Financial Services done by the consumers and/or the utilization of services and/or products of Financial Services Institution after going through the process of complaint resolution by Financial Services Institution.

Based on PBI No. 7/2005, the complaint can be done in written or orally, in each bank office, regardless whether the bank office is where the consumer opens his or her account or does the financial transaction.

When the complaint is done orally, the bank must resolve this within two working days starting from the recorded date of the complaint. If it is estimated to take a longer time, the officer of the unit that handles and resolves the complaint should ask the consumer to file a written complaint.

After receiving a written complaint from a customer, a bank must resolve the complaint in no more than 20 working days

starting from the date when the written complaint is received, which can be extended for another 20 days on certain conditions. Such conditions are as follows: the written complaint is given at a different office from the location where the problem happens so that there is a communication problem between the two offices; the financial transaction complained by the consumer needs special research on the bank documents; or there are things beyond the bank's control. According to SEBI No. 1/2014, consumers' complaint resolution can be in the form of apology or compensation to the consumer. Compensation is given to material losses, under the following conditions: (a). The consumer has fulfilled the obligations; (b). The bank products and/or services are not in accordance with what has been agreed on; (c). The complaint is filed in maximum 30 days after it is known that the products and/or services are not in accordance with the agreement; and (d). The loss has a direct impact on the consumer. The maximum compensation is as big as the consumer's loss value.

2. External Dispute Resolution

External Dispute Resolution is the resolution of disputes through judicial or non-judicial institutions. Dispute resolution can be done in two ways, namely:

a. Litigation

Dispute resolution through litigation is a dispute resolution done in court. This way can be said to be a resolution in which one party is compelled to resolve the dispute through court intermediary.

b. Arbitration

Article 1 verse (1) Act Number 1999 About Arbitration and Alternative Dispute Resolution states that: "An arbitrator (an independent person or body officially appointed to settle a dispute) is how a civil dispute is resolved outside the court which is based on an arbitrary agreement made in a written form by the party in dispute."

Arbitration is a voluntary institution chosen and appointed based on the parties' agreement if they want their dispute to be resolved by one or more arbitrators who will act independently. However, although the arbitrators are chosen and appointed by the parties in dispute, the decision made is final and binding.

c. Alternative Banking Dispute Resolution Institution

Alternative Dispute Resolution Institution (ADRI) is an institution that resolves a dispute outside the court. According to POJK No. 07/POJK.07/2014 about Alternative Dispute Resolution Institution, only alternative dispute resolution institutions listed by Financial Services Authority can handle disputes in financial services sector.

Alternative dispute resolution institutions that are in the list set by Financial Services Authority are those established by financial services institutions coordinated by an association and/or institutions having the function of a self-regulatory organization and having at least the dispute resolution services in the forms of mediation, adjudication, and arbitration.

The following institutions are in the list of alternative dispute resolution institutions set by Financial Services Authority:

1. Badan Mediasi dan Arbitrase Asuransi Indonesia (BMAI)
2. Badan Arbitrase Pasar Modal Indonesia (BAPMI)
3. Badan Mediasi Dana Pensiun (BMDP)
4. Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI)
5. Badan Arbitrase dan Mediasi Perusahaan Penjaminan Indonesia (BAMPPPI)
6. Badan Mediasi Pembiayaan dan Pergadaian Indonesia (BMPPI)

A financial services institution must become a member of 1 (one) Alternative Dispute Resolution Institution in accordance with the primary business activity. When a banking dispute takes place, the customer and the bank can resolve this in Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI), an institution that resolves banking disputes.

The establishment of Pendirian Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI) cannot be separated from the fact that in the resolution of a consumer's complaint against a banking institution, there is often disagreement between the consumer and the banking institution. In order to overcome this, it is necessary to have Alternative Dispute Resolution Institution outside the court that is handled by people with good comprehension of banking and able to manage to resolve disputes in a fast, fair, and efficient way.

According to Financial Services Authority Regulation Number 1/POJK.07/2014 about Alternative Dispute Resolution Institution in Financial Services Sector, Banking Association such as Perhimpunan Bank Nasional (Perbanas), Himpunan Bank Milik Negara (Himbara), Asosiasi Bank Pembangunan Daerah (Asbanda), Asosiasi Bank Syariah Indonesia (Asbisindo), Perhimpunan Bank-Bank Internasional Indonesia (Perbina), and Perhimpunan Bank Perkreditan Rakyat Indonesia (Perbarindo), have signed a Memorandum of Understanding on 5 May 2015 to found alternative dispute resolution institution, which is then called Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI).

The cases that can be filed to LAPSPI must meet the conditions: First, the dispute filed has to be a civil dispute that happens between the parties and banking. Second, there is an agreement between the parties in dispute that the dispute will be resolved through LAPSPI and proved with an agreement, in Mediation, Adjudication, or Arbitration. Third, disputes which according to the legislation can be reconciled.

The forms of banking dispute resolution through LAPSPI are Mediation, Adjudication, and Arbitration. Mediation is the way of resolving a dispute through a negotiation process to gain agreement with the assistance of a mediator. Adjudication is the way of resolving a dispute which is done by a adjudicator to achieve a decision that can be accepted by the applicant so

as to make the decision bind the applicant. Arbitration is the way of resolving a civil dispute in banking and which is related to banking outside general court, which is held by LAPSPI by applying LAPSPI regulations and procedures.

https://id.wikipedia.org/wiki/Bank_di_Indonesia,
retrieved 1 March 2019, at 10.00

last

E. Conclusion

Based on the discussion elaborated above, the writer draws some concluding points:

1. Financial Services Authority Regulation Number 1/POJK.07/2014 on the Institution of Alternative Dispute Resolution in the financial services sector in giving consumers' protection and Financial Services Authority Circular Letter Number 2/SEOJK.07/2014 Concerning Handling and Resolution of Consumer Complaints at Financial Services Businesses become the legal basis between a bank and its consumers in Indonesia.
2. The dispute resolution between a bank and the customers can be done through:
 - a. Internal Dispute Resolution,
 - b. External Dispute Resolution, which covers:
 - i. Litigation
 - ii. Arbitration;
 - iii. Alternative Dispute Resolution in Financial Services Sector (Specifically for a bank financial institution, the resolution is done through The Institution of Indonesian Banking Alternative Dispute Resolution in the forms of mediation, adjudication, and arbitration).

References

- John Bouvier. *A Law Dictionary*. Revised Sixth Edition 1856.
- Johannes Ibrahim. *Cross Default & Cross Collateral Sebagai Upaya Penyelesaian Kredit Bermasalah*. Bandung : Refika Aditama, 2004.
- Muliaman Hadad. *Perlindungan dan Pemberdayaan Nasabah Bank dalam Arsitektur Perbankan Indonesia*. Diskusi Badan Perlindungan Konsumen Nasional, Jakarta 16 June 2006.
- Act Number 10 of 1998 on Changes of Act Number 7 of 1992 on Banking.
- Act Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- Financial Services Authority Regulation Number 1/POJK.07/2014 on Alternative Dispute Resolution in Financial Services Sector.
- Circular Letter of The Financial Services Authority Circular Letter Number 2/SEOJK.07/2014 about Concerning Handling and Resolution of Consumer Complaints at Financial Services Businesses.
- Financial Services Authority Regulation No. 07/POJK.07/2014 on Alternative Dispute Resolution.

Banking Dispute and Alternative Dispute Resolution in Financial Services Sector as a Means to Resolve Disputes between Bank and Consumers in Indonesia

ORIGINALITY REPORT

8%

SIMILARITY INDEX

6%

INTERNET SOURCES

3%

PUBLICATIONS

7%

STUDENT PAPERS

PRIMARY SOURCES

1

Submitted to Universitas Airlangga

Student Paper

1%

2

perbanas.org

Internet Source

1%

3

islamicmarkets.com

Internet Source

1%

4

welcome-tugasbinggris.blogspot.com

Internet Source

1%

5

Submitted to Boston University

Student Paper

1%

6

Submitted to University of Leeds

Student Paper

1%

7

ojk.go.id

Internet Source

1%

8

documents.worldbank.org

Internet Source

1%

Exclude quotes On

Exclude bibliography On

Exclude matches < 1%